

**TO: UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

Dated: 12/27/06

**FROM: UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

**RE: Wellington Apartment, LLC v. Charles Clotworthy, et al., Adv. Pro. No. 05-05029-DHA (In re Wellington Apartment, LLC, Case No. 04-50301-DHA);
Appeal Nos. 4:06cv139, 140 and 141.**

MEMORANDUM

Upon the joint motion (the "Motion") of the Debtor, Wellington Apartment, LLC (the "Debtor" or "Wellington"), and Steven Byers ("Byers"), Charles Clotworthy ("Clotworthy"), Richard Merel ("Merel"), Garfield & Merel, Ltd. ("G&M"), WPN, LLC ("WPN") and WP New Orleans, LLC ("WP New Orleans") (collectively the "Defendants") for entry of an order approving the Settlement Agreement (the "Settlement Agreement") between the Debtor and the Defendants and vacating the Court's judgment; the Court having reviewed the Motion and considered all papers filed in connection with the Motion and the record herein, the Court states as follows:

The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the holding in Fobian v. Storage Tech. Corp., 164 F.3d 887, 891 (4th Cir. 1999).

A trial in this Adversary Proceeding was conducted on March 1, 2, 3, 6 and 8, 2006. On July 27, 2006, this Court entered its original Memorandum Opinion and Order (the "Original Opinion"). On August 24, 2006, this Court entered its the Amended Memorandum Opinion and Order (the "Amended Opinion"), which amended and replaced the Original Opinion. On September 9, 2006, this entered the Judgment Order (the "Judgment Order").

The Defendants and the Debtor appealed various aspects of the Amended Opinion and the Judgment Order. The appeal by Merel remains pending in this Court. The time for the

completion of the record for the appeal by Merel has been extended to January 26, 2006 (subject to further extension by this Court).

The appeals of (i) the Debtor; (ii) Byers, WPN and WP New Orleans; and (iii) Clotworthy (collectively, the "District Court Appeals"), are pending in the United States District Court for the Eastern District of Virginia (the "District Court"). The parties have not yet completed the briefing required for the District Court Appeals. On December 4, 2006, the District Court extended the briefing schedule for the District Court Appeals for sixty (60) days.

On December 7, 2006, the Debtor and the Defendants filed the Motion. The Motion requests, among other things, that upon remand of the District Court Appeals, this Court vacate the Amended Opinion, the Judgment Order and any related orders that have not been replaced or superseded by the Amended Opinion or the Judgment Order.

Upon the Motion, all papers filed in connection with the Motion and the record herein, and having found that exceptional circumstances exist which warrant granting the Motion and vacating the Amended Opinion and the Judgment Order; and in accordance with the procedure outlined by the Fourth Circuit in Fobian, 164 F.3d at 891, this Court states that upon remand of the District Court Appeals, it is inclined to grant the Motion and vacate the Amended Opinion, the Judgment Order and any related orders that have not been replaced or superseded by the Amended Opinion or the Judgment Order.

It is this Court's understanding that once it has signed this Memorandum, in accordance with the procedure outlined by the Fourth Circuit in Fobian, 164 F.3d at 891, the Debtor and the Defendants will file a motion with the District Court requesting that the District Court remand the District Court Appeals for the limited purpose of allowing this Court to grant the Motion and

vacate the Amended Opinion, the Judgment Order and any related orders that have not been replaced or superseded by the Amended Opinion or the Judgment Order.

Dated: 12/27/06



DAVID H. ADAMS
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF JUDGMENT OR ORDER
Entered on docket **DEC 27 2006**